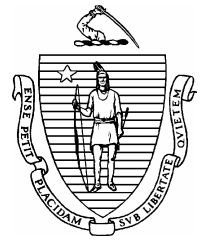


Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-06-03*

QUESTION

Is an appointed, unpaid member of a state board who also serves as a full-time, paid municipal employee barred by the conflict of interest law, G. L. c. 268A, § 6, from participating as a state board member in particular matters in which he knows his employing municipality has a financial interest?

ANSWER

No. The financial interest of the state board member's employing municipality in a particular matter will not, in and of itself, bar him from participating as a state board member in the particular matters because a municipality is not a business organization within the meaning of G. L. c. 268A.

FACTS

You serve as a gubernatorial-appointed member of the Statewide Emergency Telecommunications Board ("Board"). You are not compensated as a Board member. In addition, you are the appointed, full-time, salaried Chief of Police of the Town of Milford ("Town"), a municipality of the Commonwealth.

The Board, established by statute in late 1991,¹ is responsible for coordinating and effecting the implementation of enhanced-911 service ("E-911") and wireless E-911 service statewide in the Commonwealth and administering such service according to rules and regulations promulgated by the Board.² Every municipality in the Commonwealth is required to participate in the statewide E-911 service system by "establish[ing], staff[ing], and operat[ing] . . . a public safety answering point³ on a twenty-four hour a day, seven days a week basis, in a manner and according to a schedule to be approved by the [Board]."⁴

The Board's specific responsibilities include establishing "technical and operational standards...for the establishment of public safety answering points which utilize [E-911] network features," with which municipalities must comply, and inspecting "each public safety answering point that utilizes [E-911] network features" to determine if it meets the established standards and other requirements.⁵ The Board also has the responsibility to determine the number of public safety answering points that will be situated within municipalities throughout the Commonwealth in accordance with "a formula that takes into account cost, efficiency and the public safety needs of cities and towns."⁶ According to you, "[i]n addition to approving the budget for the operations of the [Board's] department personnel and expenses, the Board determines the need for system equipment, training, and other operational needs which may be utilized by the end users (cities and towns, or the Massachusetts State Police)." These Board determinations, made according to the formula, establish the allotment of equipment, training and services provided to each municipality. The

Board also has the responsibility to decide the distribution of certain grant funds to municipalities for training and other E-911-related purposes.

In fulfilling its above-described responsibilities, the Board is “authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work.”⁷ Funds received by the Board are deposited with the Office of the State Treasurer and may be expended by the Board according to law.⁸

DISCUSSION

As a member of the Board you are a state employee⁹ within the meaning of the conflict of interest law and, as such, subject to the provisions of G. L. c. 268A applicable to state employees.¹⁰ As the Town’s Chief of Police, you are a municipal employee¹¹ of the Town and, as such, subject to the provisions of the conflict of interest law, G. L. c. 268A, applicable to municipal employees.

As a Board member, your duties, as described above, would normally involve your participation in Board determinations and other particular matters¹² in which the Town has a financial interest. For example, the Town would have a financial interest in the Board’s determination of the number of public safety answering points to be located in the Town or in the Board’s decisions of whether and to what extent to grant funds to train the staff of any such facility in Town.

Under prior conflict of interest law opinions, both by the Commission and by the Attorney General prior to the Commission’s establishment, your participation as a Board member and state employee in a matter in which your employing municipality has a financial interest raises an issue under G. L. c. 268A, § 6, which, in relevant part, prohibits a state employee from participating¹³ in a particular matter in which, to his knowledge, he, a member of his immediate family or “a business organization in which he is serving as officer, director, trustee, partner or employee” has a financial interest. Under the Attorney General’s and our prior opinions, a municipality is a “business organization” within the meaning of § 6 and, accordingly, § 6 would prohibit your participation as Board member in any Board determination or other particular matter in which the Town has a financial interest.¹⁴

In response to your request for a formal Commission opinion, we have reconsidered our long-standing conclusion that municipalities are business organizations for G. L. c. 268A purposes. As a result, as explained below, we conclude that municipalities are not business organizations for purposes of the conflict of interest law.

Origin of the Business Organization Status of Cities and Towns

Between 1962, when G. L. c. 268A was enacted, and the establishment of the Commission in 1978, the Attorney General was charged with the responsibility of issuing opinions interpreting the conflict of interest law.¹⁵ The statute which established the Commission provided that all conflict of interest law opinions issued by the Attorney General before November 1, 1978, “shall remain valid and shall be binding on the state ethics commission until and unless reversed or modified by the state ethics commission.”¹⁶ Since its

establishment in 1978,¹⁷ the Commission has been charged with the responsibility of issuing opinions interpreting the requirements of G. L. c. 268A.¹⁸

In 1963, the first year in which the Attorney General provided conflict of interest law opinions, Attorney General Brooke opined in Conflict Opinion No. 19 that a town, as a municipal corporation, is not a business organization within the meaning of G. L. c. 268A, § 19 (the municipal counterpart to § 6). In another 1963 opinion, Conflict Opinion No. 30, the Attorney General opined that the term “business organization” in § 6 “exclude[s] the business of a public agency such as [a state commission and a state authority].”

In 1974, however, in Conflict Opinion No. 613, Attorney General Quinn, without referring to Conflict Opinion Nos. 19 or 30 or citing any authority, concluded that a town “and its various departments and the divisions thereof are organizations for conducting business” and that, thus, § 6 would bar a state board member who was also a town employee from participating in a decision by the board whether to fund a program of a division of a department of the town. The 1974 opinion offered no further explanation for its effective conclusion that municipalities are business organizations for G. L. c. 268A purposes.

In a 1980 opinion,¹⁹ the Commission cited Conflict Opinion No. 613 as authority for the conclusion that “municipal agencies and corporations are business organizations for purposes of section 6.” The Commission cited no other authority and provided no statutory analysis or other reasoning to support its conclusion.

Since 1980, the Commission has consistently adhered to the view that municipalities are business organizations within the meaning of G. L. c. 268A.²⁰ In most of its opinions, the Commission has cited only Conflict Opinion No. 613 and/or earlier Commission opinions citing that opinion.²¹ In some opinions, the Commission has simply stated the conclusion without authority.²²

Other than citing earlier opinions, the Commission has provided only slight explanation for its conclusion that municipalities are business organizations within the meaning of G. L. c. 268A. In 1992, the Commission indicated in dicta that municipalities are business organizations because they are “bodies corporate” (established “for the purpose of engaging in municipal business”)²³ in contrast with the Commonwealth which is a “body politic”²⁴ or the federal government which is an “organization,”²⁵ but not a business organization.²⁶ Counties, which are “bodies politic and corporate,”²⁷ are apparently business organizations.²⁸

This explanation, however, appears to be based on the mistaken assumption that all corporations are business organizations and that, thus, all “bodies corporate,” including municipalities, are inherently business organizations simply because they are corporations. The explanation also does not address, let alone resolve, the question of whether there is any reason to consider municipal corporations and their agencies, and not state or federal agencies (even those organized as corporations), to be business organizations for the purposes of G. L. c. 268A.

“Business Organization” Reconsidered

When construing statutory language, we are guided by the canon that

[t]he intent of the Legislature is to be determined primarily from

the words of the statute, given their natural import in common and approved usage, and with reference to the conditions existing at the time of enactment. This intent is discerned from the ordinary meaning of the words in a statute considered in the context of the objectives which the law seeks to fulfill. Whenever possible, we give meaning to each word in legislation; no word in a statute should be considered superfluous.²⁹

In the broadest sense of the term, municipalities, counties, the Commonwealth and the federal government are all “business organizations.” That is, each level of government is an “organization”³⁰ and each conducts “business,”³¹ *i.e.*, the business of, respectively, municipal, county, state and federal government.³² In this very broad, generic sense of an entity formed for a serious purpose, all levels of government would equally appear to be business organizations.³³ This very broad reading of the term “business organization” is not, however, the ordinary meaning of the term in common and approved usage and is unnecessary to fulfill the objectives of G. L. c. 268A. Furthermore, this reading of the term “business organization” construes the word “business” so broadly and inclusively as to be almost meaningless.

As set forth above, the Commission has, subsequent to its earliest opinions, limited G. L. c. 268A business organization status to municipalities and counties (and their respective agencies) and excluded the Commonwealth and the federal government (and their respective agencies) from the category.³⁴ In doing so, the Commission has implicitly recognized that the broadest reading of the term “business organization,” described above, is over-inclusive (*i.e.*, as applied to the state and the federal government) and that the term is properly more narrowly construed in the context of G. L. c. 268A. Having reconsidered the issue, we now conclude that municipalities are no more business organizations for G. L. c. 268A purposes than are the Commonwealth or the federal government.

While it is true that municipalities are “bodies corporate”³⁵ and thus corporations,³⁶ whereas the Commonwealth is a “body politic,”³⁷ that fact does not mean that cities and towns are business organizations and the Commonwealth and its agencies are not. Except in the broadest sense (which, as discussed above, would include the Commonwealth and its agencies), not all corporations (municipal or otherwise) are business organizations.³⁸ To assume that they are is to ignore essential distinctions between municipal corporations and business corporations and, more fundamentally, between business and government.

A business organization may take the form of a corporation.³⁹ But not all corporations are business corporations or business organizations.⁴⁰ Thus, by contrast, a “municipal corporation” is a “city, town, or other local political entity formed by charter from the state and having the autonomous authority to administer the state’s local laws.”⁴¹ A municipality is, in short, a “political unit . . . incorporated for local self-government.”⁴²

Massachusetts cities and towns are political subdivisions of the Commonwealth, incorporated for the purpose of local self-government, and are as such, under the state constitution, “instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men.”⁴³ Thus, the cities and towns of the Commonwealth, although organizationally “bodies corporate” and municipal corporations, are, as a matter of both common usage and the state constitutional principle, neither business corporations nor business organizations. Instead, municipalities are, like the counties, the Commonwealth and the federal government, political or

governmental organizations. Municipalities are public instrumentalities by which the public-at-large within their geographical boundaries govern themselves for the common good, and are not privately-created entities controlled by shareholders or other owners, or privately-chosen officers or directors, to pursue private profit or other non-governmental interests and purposes.⁴⁴

The fact that municipalities are organized as corporations (*i.e.*, bodies corporate) is not a valid a reason for treating them differently under G. L. c. 268A than state or federal governmental organizations. Incorporation is not unique to municipalities and their agencies. Many state agencies are by statute “bodies politic and corporate.”⁴⁵ Yet, as set forth above, after initially reaching the opposite conclusion, the Commission has determined that state “bodies politic and corporate” are not business organizations for G. L. c. 268A purposes. In addition, although municipalities themselves are “bodies corporate” under G. L. c. 40, § 1, rather than “politic and corporate,” many municipal agencies are by statute bodies “politic and corporate,” including all housing authorities,⁴⁶ redevelopment authorities,⁴⁷ municipal lighting plant cooperatives,⁴⁸ water and sewer commissions established under G. L. c. 40N, § 4, and regional school districts established under G. L. c. 71, § 15.

There is no reason for municipal agencies which are “bodies politic and corporate” to be treated as business organizations for G. L. c. 268A purposes where state agencies which are “bodies politic and corporate” are not. Similarly, the absence of the term “politic” from G. L. c. 40, § 1, is not a sufficient basis for treating cities and towns differently under G. L. c. 268A than state agencies which are “bodies politic and corporate,” particularly given that municipalities are political subdivisions of the Commonwealth organized by the people for the purposes of local self-government. Plainly, the Town, although a “body corporate,” is not more like a business organization than state “bodies politic and corporate” such as the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority or the Massachusetts Turnpike Authority; indeed the opposite is true.

In sum, the fact that municipalities are established as “bodies corporate” under G. L. c. 40, § 1 is not a valid or sufficient basis for concluding that cities and towns are business organizations for G. L. c. 268A purposes.

Finally, nothing in the legislative history of G. L. c. 268A indicates any intent to include cities and towns within the category of “business organization.” Indeed, the legislative history appears to indicate a contrary intent.

The Final Report of the Special Commission Established to Make an Investigation of an Act Establishing a Code of Ethics to Guide Employees and Officials of the Commonwealth in Their Performance of Their Duties appears to indicate that drafters of the conflict of interest law did not view the term “business organization” as inclusive of municipalities.⁴⁹ The Final Report states, in relevant part,

It is the Commission’s decision not to include in the criminal section related subject matters such as nepotism, campaign contributions, indirect influence and *relationships among public officials in different levels of government*. ... on the matter of *the dealings of a state official with municipalities or counties*, for example, it is the opinion of the Commission that further studies will be needed to determine whether legislation in this area is

necessary, once the legislation proposed by the Commission has been in operation for a reasonable period of time.⁵⁰

Professor Robert Braucher, who was a member of the Special Commission, cited this portion of the Final Report in support of his conclusion that the prohibition of G. L. c. 268A, § 19 (the municipal counterpart to § 6), “probably does not apply to either actual or prospective employment by a governmental agency.”⁵¹

In addition, commentary written shortly following the enactment of G. L. c. 268A indicates that the purpose of §§ 6, 13⁵² and 19 of the statute is to deal with conflicts between public and private interests rather than between competing public interests. Thus, Professor Buss begins his article analyzing G. L. c. 268A with the statement, “To say that a public employee has a conflict of interest is merely to say that his private affairs and his public obligations have become incompatible to some degree.”⁵³ Professor Buss further states, “The objective of conflict-of-interest legislation is primarily to eliminate in advance undesirable pressures on a public employee resulting from potentially conflicting pulls of private and public forces”⁵⁴

The Effect of the Town Not Being a Business Organization

Given that the Town is not a business organization within the meaning of § 6, the section will not prohibit you from participating as a Board member in particular matters before the Board simply because of the *Town's* financial interest in the matters. That does not mean, however, that your ability to participate as a Board member in matters affecting the Town will be unrestricted by the conflict of interest law. To the contrary, you will be subject to the following restrictions.

First, you should keep in mind that some Board matters affecting the Town may also affect your own financial interests and those of persons and entities with whom you may be closely connected. You will remain subject to § 6 prohibitions as to matters in which you, your immediate family members, partner(s), or any “business organization” in which you are serving as an officer, director, trustee, partner or employee, or any person or “organization” (including governmental organizations) with whom you are negotiating or have any arrangement concerning prospective employment, have/has a financial interest.⁵⁵ Further, if, pursuant to a written determination by your state appointing authority (the Governor) under § 6, you are authorized to participate as a Board member in such a particular matter, you must act fairly and impartially and not use your official position to secure an unwarranted privilege or exemption for yourself or anyone else.⁵⁶

Second, you will be required to disclose in writing to your state appointing authority the fact of your employment with the Town and the relevant circumstances of your participation as a Board in matters affecting the financial or other significant interests of the Town⁵⁷ and to act fairly and impartially in all such matters.⁵⁸

Third, as a municipal employee of the Town, you are generally prohibited from acting as the Board's or the Commonwealth's agent⁵⁹ in any matter in which the Town is a party or has a direct and substantial interest.⁶⁰

Finally, the Governor, as the appointing authority for your Board position, is not precluded by this opinion, or by G. L. c. 268A generally, from imposing additional restrictions on

your participation as a Board member in matters affecting the interests of the Town, including prohibiting your participation in those matters.⁶¹

CONCLUSION

Based on our reconsideration of the meaning of the term “business organization” in G. L. c. 268A, §§ 6, 13 and 19, we conclude that neither the plain meaning of the term nor the legislative history and intent of the statute require or support the inclusion of municipalities within the scope of the term for the purposes of the statute. We reach the same conclusion with regard to counties. Accordingly, we will no longer treat municipalities or counties as business organizations for conflict of interest law purposes.⁶²

DATE AUTHORIZED: June 8, 2006

* Pursuant to G.L. c. 268B, § 3(g), the requesting person has consented to the publication of this opinion with identifying information.

¹ St. 1991, c. 412, § 5; G. L. c. 6A, § 18B.

² G. L. c. 6A, § 18B(b).

³ According to the Board’s website, a “public safety answering point” is an E-911 communications center and there are approximately 270 public safety answering points in the Commonwealth, some of which are regionally-based to answer calls for multiple communities.

⁴ G. L. c. 6A, § 18D(a).

⁵ G. L. c. 6A, § 18B(b).

⁶ *Id.*

⁷ G. L. c. 6A, § 18B(f).

⁸ *Id.*

⁹ “State employee” means a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. G. L. c. 268A, § 1(q).

¹⁰ Because Board members are uncompensated, you are a special state employee. G. L. c. 268A, § 1(o).

¹¹ “Municipal employee” means a person performing services for or holding an office, position, employment, or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis.
G. L. c. 268A, § 1(g).

¹² “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination,

finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

¹³ “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G. L. c. 268A, § 1(j).

¹⁴ This prohibition would not apply, however, if you first received from your state appointing authority (the Governor), after your written disclosure of the Town’s financial interest in a particular matter before you as a Board member, his written determination as provided for in § 6, that the Town’s financial interest in the matter is not so substantial as to be deemed likely to affect the integrity of your services as a Board member. You have recently made such a § 6 disclosure to the Governor concerning E-911 training grants to municipalities.

¹⁵ St.1962, c. 779, § 1. The Attorney General last issued conflict of interest law opinions on October 31, 1978.

¹⁶ St.1978, c. 210, § 24.

¹⁷ The Commission’s first meeting was on October 20, 1978.

¹⁸ G. L. c. 268A, § 10; G. L. c. 268B, § 3(g). The Commission issued its first conflict of interest law opinion (*EC-COI-78-1*) on December 18, 1978.

¹⁹ *EC-COI-80-111*.

²⁰ The Commission has not been as consistent with the status of the Commonwealth and its agencies. The Commission initially concluded that the Commonwealth itself, *EC-COI-82-1*, *82-13*, and a state agency organized as a “body politic and corporate” (a regional transportation authority), *EC-COI-81-119*, were business organizations. Subsequently, the Commission reversed its position. In a footnote to a 1992 opinion, *citing EC-COI-92-11*, *92-3 n.3*, *85-67*, and Attorney General Conflict Opinion No. 30 and overstating the clarity of the precedent, the Commission stated, “the Commission and the Attorney General have repeatedly held that neither the state nor any state agency is a ‘business organization.’” *EC-COI-92-25 n.1*.

²¹ *See, e.g., EC-COI-92-25 (citing EC-COI-92-8, 89-2, and 88-4); EC-COI- 92-8 (citing EC-COI-92-3, 90-8, 90-4, 89-2, 85-67, 84-120, 82-25, 81-62, and 81-56); EC-COI-90-8 (citing EC-COI-88-); EC-COI-89-2 (citing Attorney General Conflict Opinion No. 613 and EC-COI-80-111); EC-COI-84-77 (citing EC-COI - 81-56); EC-COI-81-56 (citing Attorney General Conflict Opinion No. 613); EC-COI-80-111 (citing Attorney General Conflict Opinion No. 613).*

²² *See, e.g., EC-COI-84-120.*

²³ *EC-COI-92-11.*

²⁴ *Id.*

²⁵ *EC-COI-92-3.*

²⁶ *EC-COI-92-11* cites *EC-COI-92-3* as authority for the proposition that, “governmental entities, such as the federal government, which are not organized as “bodies corporate” may not be considered business organizations,” although the earlier opinion, which concerned the meaning of the term “organization” (and not “business organization”) did not reach that conclusion and, in fact, expressly deferred deciding the

significance of municipalities being “bodies corporate” and the Commonwealth being a “body politic.” *EC-COI-92-3 n.3*.

²⁷ G. L. c. 34, § 1.

²⁸ The Commission’s position as to the business organization status of counties is somewhat unclear due to the lack of recent opinions. Early Commission opinions concluded that counties and county agencies are business organizations. See, e.g., *EC-COI-81-119*; *81-150*; *82-143 n.11* (“‘business organization’ includes both profit and non-profit organizations, municipal and county governments and agencies, and other governmental entities”). Dicta in *EC-COI-92-3 n.3* (“Although this Commission has held in previous opinions that municipalities and municipal agencies are ‘business organizations’ within the meaning of §6, [citations omitted], other governmental agencies apparently are not considered ‘business organizations.’”), combined with the absence of subsequent Commission opinions dealing with the issue, however, has cast some doubt on the business organization status of counties and county agencies.

²⁹ See, e.g., *EC-COI-92-11* (quoting, with citations omitted, *Int’l Organization of Masters, etc. v. Woods Hole, Martha’s Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984)).

³⁰ “Organization” means “something that has been organized or made into an ordered whole” or “a number of persons or groups having specific responsibilities and united for a particular purpose.” *The American Heritage Dictionary* (2nd College Ed. 1985) at 876. See *Commission Advisory No. 90-01: Negotiation for Prospective Employment* (“The term ‘organization’ includes corporations, business trusts, estates, partnerships, associations, two or more persons having a joint or common interest, and any other legal or commercial entity, as well as federal, state or local governmental agencies and subdivisions.”)

³¹ “Business” means, in its broadest sense, “serious work or endeavor.” *The American Heritage Dictionary* (2nd College Ed. 1985) at 220.

³² Attorney General Conflict of Interest Opinion No. 613 concluded that municipalities are business organizations based on this broad reading of the statutory language.

³³ Thus, as set forth above, the Commission’s early opinions concluded that the Commonwealth, the counties and municipalities are all business organizations.

³⁴ See *EC-COI-92-3 n.3*; *EC-COI-92-25 n.1*.

³⁵ G. L. c. 40, § 1.

³⁶ A “body corporate” is a corporation. *Webster’s Third New International Dictionary* (1993) at 246.

³⁷ *Constitution of the Commonwealth of Massachusetts, Preamble; Part 2, The Frame of Government*. A “body politic” is “the whole people organized and united under a single political authority.” *Webster’s Third New International Dictionary* (1993) at 246.

³⁸ The converse is true as well: not all business organizations are corporations.

³⁹ A business organization may also take other forms, such as, for example, a partnership or trust.

⁴⁰ A “business corporation” is commonly defined as a “corporation formed to engage in commercial activity for profit.” *Black’s Law Dictionary* 341 (7th ed. 1999) at 341.

⁴¹ *Id.* at 1037.

⁴² *The American Heritage Dictionary* (2nd College Ed. 1985) at 822.

⁴³ *Constitution of the Commonwealth of Massachusetts, Part 1, Article VII.*

⁴⁴ Cities and towns, as municipal corporations, are established, empowered and governed by different statutes (primarily G. L. c. 39 through c. 49) than are other types of corporations (G. L. c. 155 through c. 182).

⁴⁵ Such state agencies include, but not limited to: charter schools (G. L. c. 71, § 89(j)); the Massachusetts Technology Park Corporation (G. L. c. 40J, § 3); the Massachusetts Development Finance Agency (G. L. c. 23G, § 2(a)); the Community Economic Development Assistance Corporation (G. L. c. 40H, § 3(a)); the Massachusetts Technology Development Corporation (G. L. c. 40G, § 2); the Massachusetts Centers for Excellence Corporation (G. L. c. 40J, § 12); the Massachusetts College Student Loan Authority (G. L. c. 15C, § 4(a)); the School Building Authority (G. L. c. 70B, § 1A); the Massachusetts Bay Transportation Authority (G. L. c. 161A, § 2); the Massachusetts Port Authority (G. L. c. 91 App., § 1-2); and the Massachusetts Turnpike Authority (G. L. c. 81A, § 1).

⁴⁶ G. L. c. 121B, § 3.

⁴⁷ *Id.*, § 4.

⁴⁸ G. L. c. 164, § 47C(b).

⁴⁹ See Mass. House No. 3650 of 1962.

⁵⁰ *Id.* at 9 (*emphasis added*).

⁵¹ Robert Braucher, Conflict of Interest in Massachusetts, in Perspectives of Law: Essays for Austin Wakeman Scott (Pound, Griswold & Sutherland 1964) at 24.

⁵² Section 13 is the county counterpart to §§ 6 and 19.

⁵³ William G. Buss, *The Massachusetts Conflict-of-Interest Statute: An Analysis*, 45 B.U.L. Rev. 299 (1965).

⁵⁴ *Id.* at 301.

⁵⁵ *Commission Advisory No. 90-01: Negotiation for Prospective Employment.*

⁵⁶ G. L. c. 268A, § 23(b)(2). Section 23(b)(2) provides, in relevant part, that no public employee may, knowingly or with reason to know, use his official position to secure unwarranted privileges or exemptions of substantial value for himself or others.

⁵⁷ G. L. c. 268A, § 23(b)(3). Section 23(b)(3) prohibits a public employee from, knowingly or with reason to know, engaging in conduct which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or position of any person. To dispel the “appearance of a conflict,” § 23(b)(3) requires that, prior to participation, the public employee file a full written disclosure of all of the relevant facts with his appointing authority. Unlike a disclosure under § 6, a § 23(b)(3) disclosure does not require any action by the appointing authority. Furthermore, if the relevant facts have already been disclosed under § 6, an additional disclosure under § 23(b)(3) is not required.

⁵⁸ G. L. c. 268A, § 23(b)(2).

⁵⁹ “[T]he distinguishing factor of acting as agent within the meaning of the conflict law is ‘acting on behalf of’ some person or entity, a factor present in acting as spokesperson, negotiating, signing documents and submitting applications.” *In Re Sullivan*, 1987 SEC 312, 314-15. See *In Re Reynolds*, 1989 SEC 423, 427; *Commonwealth v. Newman*, 32 Mass. App. Ct. 148, 150 (1992). By contrast, merely discussing or voting as a Board member on a matter is not an act of agency.

⁶⁰ G. L. c. 268A, § 17. Under § 17(a) and (c), a municipal employee generally may not, directly or indirectly, receive compensation from or act as agent or attorney (even if unpaid) for anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest. Conversely, under § 4(a) and (c), as a special state employee due to your Board membership, you are generally prohibited from acting as agent for or being compensated by anyone (including the Town) other than the Commonwealth in a matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest and in which you have at any time participated, or for which within one year you have had official responsibility, as a state employee.

⁶¹ Section 23(e) of G. L. c. 268A provides, in relevant part, “Nothing in this section shall preclude any such constitutional officer . . . from establishing and enforcing additional standards of conduct.”

⁶² We do not address, and this opinion should not be read to preclude, the possibility of an entity created by a level of government (municipal, county, state or federal) which may itself be a business organization within the meaning of G. L. c. 268A.